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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/723,868	11/28/2000	Daniel Faneuf	FANEUF 00.02	6422

7590 10/10/2003

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EXAMINER	
SMITH, KIMBERLY S	
ART UNIT	PAPER NUMBER
3644	

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

Office Action Summary	Application No. 09/723,868	Applicant(s) FANEUF, DANIEL	
	Examiner Kimberly S Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1, 2, 4, 5, 7, 8, 10-13, 15-17, 19,-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4, 5, 7, 8, 10-13, 15-17, 19,-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *16 April 2002* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 09/10/03 have been fully considered but they are not persuasive. Regarding the Applicant's statement that attaching a length of rope to the "APA" hanger would interfere with its intended use. It is noted in the Applicant's information disclosure statement has included an advertisement for the "UNI-CLIP". As seen in this advertisement, the clips are sold separately from the hanging mechanism. As such, it is not considered to be outside the realm of obviousness for the APA clip, having been disclosed as prior art, to be used in conjunction with a rope as it is known to use clips in conjunction with a rope for culling fish in much the same manner as it would not be considered unobvious to use the APA clip for closing a snack chip bag as clips are known for used in such a function. It is considered that given a known clip, there is a reasonable expectation of success that the clip would function in the manner intended for any clip, i.e. that it is to maintain an object between two protrusions.

2. Regarding the Johnson reference, the main inventive concept for the invention is the method of forming the rope marker assembly, not the particular clip to which it is to be used with. As such, it is considered to be within the skill of an artisan in the art to try any known clip, irrespective of intended prior use, and to have a reasonable expectation of success with the clip for the intended purpose (i.e. to maintain a grip on something).

3. Regarding the applicant's statement that W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 154, 1553, 220 USPW 303, 313 (Fed. Cir. 1983) is the exact situation being used here in which the Applicant's own art is being used against him. The examiner respectfully disagrees

with this statement. The issue discussed in the cited case was to whether a patent granted on a process is in a public use bar under Section 102(b) if only the product resulting from the process was sold and the process is not known from the product or the machine operating the process. As the applicant's own invention was directed to the product (i.e. a clip) and that one in the public could discern that the clip would function in a known manner given the design, it is considered that the device was in public use at the time of the invention and therefore is maintained as a teaching of prior art, irrespective of the inventive entity.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 2 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 2 recites the limitation "third arm" in line 2. There is insufficient antecedent basis for this limitation in the claim. The third arm is construed as a "the third protrusion".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1, 2, 4, 5, 7, 8, 10-13, 15-17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, US Patent 6,044,582 in view of Applicant's Admission of Prior Art, Figure 1 and related pages of instant application (Admission).

Johnson discloses a length of rope (12) having a loop formed at a first end (seen in figure 3) securing the rope to a clip (32). However, Johnson does not positively disclose the clip design with the exception that the clip is held by the lower end portion loop of the rope and that it be adapted for releasably holding a fish. Admission discloses a molded plastic clip having first and second arms (attached to first and second protrusions)/elongated rigid members/first and second members (136, 138) rotatable/pivotable about a spacer (114), the first and second arms/elongated rigid members/first and second members moveable between a first position and a second position, the first and second arms/rigid members/first and second members urged towards one another by a biasing member (116) with a gripping force at the gripping portion (126, 128) capable of holding a fish by a lip without punching a hole in the fish and a ledge (120) spaced from the spacer for restricting movement of the biasing member and further including a third protrusion (130A) extending from the spacer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the clipping device as taught by Admission as the clip disclosed by Johnson as a matter of design choice since the clipping device as taught by Admission includes a base part capable of being held within the lower end portion of the rope (area located beneath Biasing Member 116) and having a hook part adapted for releasably holding an item (i.e. a fish) as required by Johnson. As any clip is designed for the purpose of holding an item, a clip of any particular design has the same functional equivalency and it is therefore within the skill of an artisan to determine the most appropriate clip capable for

use in any given situation. Reference is noted to Yaman JP 0369846 (cited in the prior action) in which a single clip design falls within the scope of utilization for drying clothes, fruits and fish. It is therefore considered to be well known in the art that clips used for hanging clothes (such as that disclosed by Admission) are also known to be capable for use in hanging fish.

Further regarding claim 21, Admission discloses protrusions disposed at first ends of the first and second member (126,128) extending towards each other and angled towards the spacer.

Regarding claims 2 and 13, Johnson as modified discloses the first, second and third arms, the first and second protrusions/rigid members, the spacer and the biasing member are molded as one piece (page 3, line 3 of Admission).

Regarding claims 4 and 15, Johnson as modified discloses the rope being a braided hollow polypropylene (column 1, line 45 of Johnson).

Regarding claims 5, 16 and 17, Johnson as modified discloses the loop being formed by inserting the first end of the rope inside the hollow rope a spaced distance from the first end (see figure 3 of Johnson).

Regarding claims 7 and 19, while Johnson as modified does not disclose the rope comprising a second end which is formed into a loop, it is well known that the addition of a loop in a length of rope (e.g., an animal leash) and is therefore considered to be within the ordinary skill of an artisan in the art to loop the second end of the rope to aid in the grasping of the rope.

Regarding claim 8, Johnson as modified discloses a marker for indicating the weight of an attached fish (column 1, lines 37-39 of Johnson).

Regarding claim 10, Johnson as modified discloses the first and second protrusions being angled towards the biasing member (as seen in Figure 1 of Admission).

Regarding claims 11 and 22, Johnson as modified discloses the first and second protrusions comprising a plurality of grooves (seen in Figure 1 of Admission).

Regarding claim 20, Johnson as modified discloses the rope being adapted to float on the surface of water.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

kss

Charles T. Jordan

CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600